IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3461 OF 2006

Munirul Islam Mallik Abujafar Mallik and another — Applicants

versus

The State of Maharashtra — Respondent

Mr.Pravin Singhal for applicants.
Mr.P.A.Pol, APP for respondents.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 25th September 2006

PC :

1. This application for bail is filed because a case has been registered against the applicants for offences punishable under Rules 3 and 6 of the Passport (Entry into India) Rules, 1950 r/w Section 14 of Foreigners Act and Order 3(1) of Foreigners Order, 1948. The applicants are residing at Chita Camp, Trombay, Mumbai which is apparently a slum colony. It appears that they were booked up after they could not prima facie satisfy that although Muslims and speaking Bengali Language, they cannot be said to have entered India without any valid document and

authorisation. It is true that they could not produce said documents but had the same in their possession, as disclosed at paras 4 and 5 of the instant application.

2. The learned Metropolitan Magistrate rejected their application for bail on 4th September 2006 and the learned Sessions Judge also proceeded to do so vide order dated 13th September 2006.

3. The applicants are arrested on 14th August 2006 and presently are in Magisterial Custody at Byculla Central Prison, Mumbai.

4. Shri Singhal appearing for the applicants contends that relevant provisions namely Passport Rules would not apply as admittedly the applicants are residing in India for last about 13 years. This is duration of residence in Mumbai. It cannot be said that applicants are persons who have entered from Bangladesh without any proper documents and authorisation.

5. After the application and annexures thereto are perused by me with the assistance of Shri Singhal, I find that the learned Judge has in terms observed in his order at para 5 that a case

is not made out that the applicants are arrested after they had entered Indian Territory without having valid passport. Thus, prima facie case of violation of Rules 3 and 6 of Passport Rules is not made out against the applicants.

6. Yet, the learned Judge proceeds to go into the Foreigners Act and observes that Passport, School Leaving Certificate and documents are prepared at the instance of the applicants. These documents cannot be prima facie accepted to be proof of the fact that applicants were born in India.

7. In my view, once the learned Judge was convinced that the applicants are residing in India for 13 long years and have not entered Indian Territory without any Authorisation or Passport as alleged, then it was not necessary to go into other aspects. Once the documents were there in applicants possession and the authorities refused to take them into custody for scrutiny and verification, a sympathetic view in the peculiar facts of this case should have been taken with regard to all applicants. The applicants plea should have been granted and the learned Sessions Judge erred in allowing the

application in part.

8. Additionally, Shri Singhal on the last occasion had handed over all original documents to the Investigating Officer in Court which have been now taken in custody and dispatched to the appropriate authorities for scrutiny and verification so also report. In fact, the originals are handed back and certified copies are now forwarded as above.

9. In such circumstances, the applicants deserve to be enlarged on bail. Hence, following order.

10. ORDER :-

(i) The applicants shall be enlarged on bail in connection with LAC No.72 of 2006 registered with S.B.1, CID 'I' Branch, Mumbai subject to furnishing a personal bond of Rs.10,000/- (Rs.Ten thousand only) each with one or two solvent sureties in the like sum;

(ii) Applicants shall attend the office of SBI, CID 'I' Branch, Mumbai on every Wednesday between 4.00 p.m. to 6.00 p.m. till conclusion of trial and thereafter as per directions of Trial Court;

(iii) The applicants shall furnish their residential addresses where they propose to reside after bail and during pendency of trial to the Investigating Authority and without prior intimation to the Investigating Agency shall not change their residence;

(iv) The applicants shall furnish their passports, if any, to the Investigating Authority forthwith;

(v) The bail is granted subject to condition that the applicants shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence;

(vi) The applicants shall co-operate with the Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail;

(vii) Any observation/s made in this order shall not be constructed as any finding or any expression of opinion on the merits of the case at the time of trial;

(viii) Application is disposed of in above terms.

(S.C.DHARMADHIKARI, J.)